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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,323	10/28/2003	Louis P. Steinhauser	5269-000004/CPB	4859
28997	7590	06/06/2006	EXAMINER	
HARNESS, DICKEY, & PIERCE, P.L.C. 7700 BONHOMME, STE 400 ST. LOUIS, MO 63105			BASINGER, SHERMAN D	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/695,323	STEINHAUSER, LOUIS P.	
	Examiner	Art Unit	
	Sherman D. Basinger	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 May 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 October 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Motose et al.

Davis discloses an outboard motor position responsive system comprising an ignition system including the ignition switch sensor 290, an outboard motor position sensor 220 in communication with the ignition system, a microprocessor 100 in communication with the outboard motor position sensor, an alarm 380 in communication with the microprocessor, an ignition disabling switch shown at the bottom of figure 1b and a tilt circuit including the up and down trim solenoid drivers in communication with the microprocessor.

Davis does not disclose wherein the communications are via radio frequency signals or via infrared signals; however, Davis does disclose that signals are through microprocessor 100.

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Motose et al discloses a plurality of outboard motor sensor signals transmitted using radio waves or infrared signals (column 10, lines 9-17).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to modify Davis such that the signals from the sensors such as the ignition switch sensor 290 and the trim sender sensor 220 are sent to the microprocessor 100 and thereon to the alarm 380 and ignition disable via radio frequency signals or infrared signals in a manner taught by Motose et al. Motivation to do so is to avoid the use of wiring which requires a wiring harness and the placement of the harness.

While Davis also does not disclose

wherein when an

operator attempts to start the ignition system when the

outboard motor is tilted up beyond a maximum safe tilt position, the alarm is

activated by the microprocessor to warn the operator,

wherein when an

operator attempts to start the

ignition system when the

outboard motor is tilted up beyond a maximum safe tilt position, the ignition disabling

switch is activated by the microprocessor to prevent the operator from starting the

ignition system, and

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wherein when

an operator attempts to start the ignition system when the outboard motor is tilted up beyond a maximum safe tilt position, the tilt circuit is activated by the microprocessor to automatically lower the outboard motor, these limitations are considered to be functional language.

While Davis also does not disclose

wherein when an operator attempts to start the ignition system when the outboard motor is tilted up beyond a maximum safe tilt position, the alarm is activated by the outboard motor position sensor to warn the operator, wherein when an operator attempts to start the ignition system when the outboard motor is tilted up beyond a maximum safe tilt position, the ignition disabling switch is activated by the outboard motor position sensor to prevent the operator from starting the ignition system, and wherein when an operator attempts to start the ignition system when the outboard motor is tilted up beyond a maximum safe tilt position, the tilt circuit is activated by the outboard motor position sensor to automatically lower the outboard motor, these too are considered to be functional language.

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function.

3. Claims 2, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Beilfuss.

Davis discloses an outboard motor position responsive system comprising an ignition system including the ignition switch sensor 290, an outboard motor position sensor 220 in communication with the ignition system, a microprocessor 100 in communication with the outboard motor position sensor, an alarm 380 in communication with the microprocessor, an ignition disabling switch shown at the bottom of figure 1b and a tilt circuit including the up and down trim solenoid drivers in communication with the microprocessor.

Davis does not disclose that communications are superimposed over existing wiring of a power boat. Using existing wiring to send signals superimposed on the existing wiring is very well known. Beilfuss in 1966 patented a call system for hostellries in which a fire alarm circuit is superimposed on a morning call circuit to allow addition of a fire alarm system to an already existing installation with running additional wiring between the desk and rooms. In view of this teaching it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject

matter pertains to superimpose the signals from sensors such as the ignition switch sensor 290 and the outboard motor position sensor 220 of Davis to the microprocessor 100 and thereafter to the alarm 380 and the ignition disable over existing wiring of the power boat of Davis. Motivation to do so is found in Beilfuss in his statement that additional wiring will not have to be run between the sensors, microprocessor and alarms.

Davis also does not disclose

wherein when an

operator attempts to start the ignition system when the outboard motor is tilted up beyond a maximum safe tilt position, the alarm is activated by the microprocessor to warn the operator,

wherein when an

operator attempts to start the

ignition system when the

outboard motor is tilted up beyond a maximum safe tilt position, the ignition disabling switch is activated by the microprocessor to prevent the operator from starting the ignition system and

wherein when

an operator attempts to start the ignition system when the

outboard motor is tilted up beyond

a maximum safe tilt position, the tilt circuit is

activated by the microprocessor to automatically lower the outboard motor; however, these limitations are considered to be functional language.

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function.

Response to Arguments

4. Applicant's arguments filed May 15, 2006 have been fully considered but they are not persuasive. Applicant's arguments that the claims of record are patentable because similar claims were allowed in patent 6,682,371 is rebutted by stating that the claims patented in 6,682,371 were allowed over the art made of record in that patent application such art not including Davis 473, Beilfuss and Motose et al. The claims of record are in a continuation in part and are different than the claims patented.

5. With regard to applicant's arguments that Davis 473 does not teach what is claimed in the last paragraph of each of the pending claims, new grounds of rejection with regard to claims 1-9 has been set forth. That new grounds of rejection considers the limitation in the last paragraph of each of claims 1-9 to be functional recitations. These paragraphs claim no structure. In MPEP 2114 it is clearly set forth that apparatus claims must be distinguished from the prior art in terms of structure rather than function. Apparatus claims cover what a device is, not what a device does. The structural differences between Davis and the claims is made obvious by Motose et al or

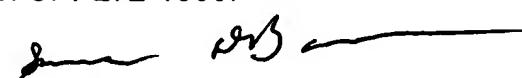
Beilfuss. The claimed ignition system, microprocessor, outboard motor and alarm are disclosed by Davis.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 571-272-6679. The examiner can normally be reached on Monday through Friday, 5:30 a.m. to 2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sherman D. Basinger
Primary Examiner
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